STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SKYLAR LYNN TRELOAR,
Minor.

AMY LYNN TRELOAR and JAMES CREIGHTON HINES,

Petitioners-Appellees,

v

JATINKUMAR HARJIVAN MEHTA,

Respondent-Appellant.

UNPUBLISHED
August 9, 2005

No. 258950
Ingham Circuit Court
Family Division
LC No. 04-000106

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

COOPER, P.J. (*dissenting*).

I must respectfully dissent from the majority opinion of my colleagues. I would find that petitioners failed to establish sufficient grounds for termination under MCL 710.51(6).

Pursuant to the Michigan Adoption Code:

> If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter, and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if *both* of the following occur:
>
> (a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the child or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> (b) The other parent, having the ability to visit, contact, or communicate wit the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.[1]

There is no question that respondent failed to substantially comply with the support order. Over the two-year period, respondent, who has a masters degree in electrical engineering, only paid approximately ten percent of his child support obligation.

However, it is not clear that respondent "regularly and substantially failed or neglected" to visit and contact his child. Petitioners alleged that respondent had only visited the child six times during her life, and that he rarely asked to see her. Prior to the spring of 2002, and again in the fall of 2002, respondent resided in California. Contrary to the trial court's finding, it would not be feasible to maintain a relationship by telephone with a child so young. Furthermore, respondent testified that he visited the child weekly before returning to California and requested to resume this visitation schedule in August of 2003. Ms. Treloar admitted that she denied respondent's request.

The sparse contacts respondent had with his child may be enough for a trier of fact to restrict visitation in a custody dispute. However, it is well-established that parents have a significant, fundamental "interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process."[2] Regardless of the version of events the trial court chose to believe, there is no evidence of conduct so egregious as to justify terminating respondent's parental rights. Accordingly, I would reverse the trial court's order terminating respondent's parental rights.

/s/ Jessica R. Cooper

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[1] MCL 700.51(6) (emphasis added).

[2] *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003), citing *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). See also *Troxel v Granville*, 530 US 57, 65-66; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (invalidating a grandparent visitation statute based the Court's eighty-year history of protecting a parent's fundamental right).